

Supreme Court, U. S.

FILED

JUN 11 1977

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. **76-1769**

JOSEPH H. LIBERMAN,
Petitioner,

v.

CITY OF ST. LOUIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Missouri

BERNARD SUSMAN
722 Chestnut Street, Suite 918
St. Louis, Missouri 63101
314-621-6043
Attorney for Petitioner

RANDOLPH E. SCHUM
322 First National Bank Building
East St. Louis, Illinois 62201
618-271-1800
Attorney for Petitioner

ROBERT M. SUSMAN
722 Chestnut Street, Suite 918
St. Louis, Missouri 63101
314-621-6043
Attorney for Petitioner

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions presented	2
Constitutional Provisions and Statutes Involved	4
Statement	5
Reasons for Granting the Writ	7
Conclusion	12
Appendix	A-1

Citations

Cases:

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)	10
Boyce Motor Lines v. United States, 342 U.S. 337 (1952)	8
Bumper v. California, 391 U.S. 543 (1968)	8
Camara v. Municipal Court, 387 U.S. 523 (1967)	7
Eisenstadt v. Baird, 405 U.S. 438 (1972)	11
F. S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920)	9
Fuentes v. Shevin, 407 U.S. 67 (1972)	10
Goldblatt v. Town of Hempstead, New York, 369 U.S. 590 (1962)	10

Griffin v. Breckenridge, 403 U.S. 88 (1971)	11
Griswold v. Connecticut, 381 U.S. 479 (1965)	11
Johnson v. Robison, 415 U.S. 361 (1974)	9
Mancusi v. DeForte, 392 U.S. 364 (1968)	7
Papachristou v. City of Jacksonville, 405 U.S. 156 (1972)	3, 8
Pierce v. Society of Sisters, 268 U.S. 510 (1925)	11
See v. City of Seattle, 387 U.S. 541 (1967)	3, 7
Stanley v. Georgia, 394 U.S. 557 (1969)	11
United States v. General Motors Corporation, 323 U.S. 373 (1945)	10
United States v. Tropicano, 418 F2d 1069 (2d Cir. 1969), Cert. Denied, 397 U.S. 1021 (1970)	10

Constitutional Provisions and Statutes:

Fourth Amendment, United States Constitution	2, 4, 7, 11
Fifth Amendment, United States Constitution	3, 4, 10, 11
Thirteenth Amendment, United States Constitution	4
Fourteenth Amendment, United States Constitution	2, 3, 4, 9, 11
Ordinance No. 55784, City of St. Louis, Missouri	3, 5, 6, 11

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No.

JOSEPH H. LIBERMAN,
Petitioner,

v.

CITY OF ST. LOUIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Missouri

The Petitioner, Joseph H. Liberman, prays that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of Missouri rendered in these proceedings on February 14, 1977, and upon which rehearing was denied on March 14, 1977.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Missouri appears at 547 S.W.2d 452, and appears at Appendix A, *infra*, p. A-1.

JURISDICTION

The judgment of the Supreme Court of the State of Missouri was entered on February 14, 1977. A rehearing was denied on March 14, 1977 and the order therefor appears at Appendix B, *infra*, p. A-12. This Petition for Certiorari was filed less than 90 days from the date upon which rehearing was denied. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

The Petitioner was charged with violations of Ordinance 55784, Revised Code of the City of St. Louis, 1960, for failing to keep a proper register of a loan involving a saxophone and failing to photograph the person from whom it was received. The Petitioner was found guilty of both charges in the City Court of St. Louis and the St. Louis Court of Criminal Correction.

The Petitioner timely presented his allegations of error to the trial court in the form of a Motion for a New Trial, but this motion was denied. The Supreme Court of Missouri thereafter affirmed the convictions.

The questions presented for review are as follows:

1. Whether the warrantless search of the Petitioner's pawnshop by the St. Louis police officers violated the Petitioner's right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution and as specified in *See v. City of Seattle*, 397 U.S. 541 (1967);

2. Whether Ordinance No. 55784 is unconstitutional on its face and violative of the due process clause of the Fourteenth

Amendment of the United States Constitution and *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), because it is vague, doubtful, and uncertain, fails to make it known to those to whom it is addressed what conduct on their part will render them liable for its penalties, and leaves its interpretation to the caprices of the judge or jury;

3. Whether Ordinance No. 55784 is unconstitutional and violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution because it unreasonably singles out pawnshops from secondhand stores, junk dealers, and antique shops;

4. Whether Ordinance No. 55784 is unconstitutional because it compels the taking of Petitioner's property and interference with his business without compensation and without first giving him notice and an opportunity to be heard in violation of Petitioner's rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution;

5. Whether the warrantless search of Petitioner's pawn register and seizure of photographs without consent, pursuant to Ordinance No. 55784, violated the right of the Petitioner and his customers to privacy as guaranteed by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution; and

6. Whether Ordinance No. 55784 is unconstitutional and violative of the Thirteenth Amendment of the United States Constitution because it coerces Petitioner into a state of involuntary servitude by compelling him to aid the police to assist in the apprehension of potential thieves against his will.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions of the United States Constitution which are included within this Petition are (1) the right to freedom from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments; (2) the right to due process as guaranteed by the Fourteenth Amendment; (3) the right to equal protection as guaranteed by the Fourteenth Amendment; (4) the right to freedom from the taking of property without compensation and an opportunity to be heard as guaranteed by the Fifth and Fourteenth Amendments; (5) the right to privacy as guaranteed by the Fourth, Fifth, and Fourteenth Amendments; and (6) the right to be free from involuntary servitude as guaranteed by the Thirteenth and Fourteenth Amendments.

The only statutory provision involved in this Petition is Ordinance No. 55784 of the Revised Code of the City of St. Louis, 1960.

The specific Constitutional Provisions and Ordinances involved in this case are as follows:

1. Fourth Amendment to the Constitution of the United States (U.S.C.A., Const. Amend. 1 to 4, page 361).
2. Fifth Amendment to the Constitution of the United States (U.S.C.A., Const. Amend. 5, page 4).
3. Thirteenth Amendment to the Constitution of the United States (U.S.C.A., Const. Amend. 13 to 14, page 5).
4. Section 1 of Fourteenth Amendment of the Constitution of the United States (U.S.C.A. Const. Amend. 13 to 14, page 33).
5. Ordinance No. 55784 of the City of St. Louis, Missouri (to be found in "City Ordinances 1970-71").

Pertinent extracts are set out verbatim in Appendix C *infra* p. A-13.

STATEMENT

City Ordinance 55784 was approved by the City of St. Louis, Missouri, on January 7, 1971. Briefly, it required that pawnbrokers take photographs of their customers, keep records which were to be made available to law enforcement officers without proper warrant, and refuse certain items whose manufacturer's serial number was not clearly visible.

Appellant is a pawnbroker doing business in the City of St. Louis, Missouri, as the Easton Loan Company.

No other business in St. Louis is required to photograph its customers. This includes certain businesses which are similar to a pawnshop with respect to the possibility of acceptance of stolen goods: junk dealerships, antique establishments, and second-hand stores. Furthermore, pawnshops are not compensated for the expenses involved. Additionally, the pawnbroker must permit law enforcement officers to inspect his register upon demand and deliver photographs to law enforcement officers in the same manner.

On November 18, 1974, Petitioner was charged by information with the violations of Sections 700.130 and 700.061 of Ordinance No. 55784; to wit, the failure to keep a proper register of a loan involving a saxophone and failing to photograph the person from whom it was received. The arrest of the Petitioner was based upon a review of Petitioner's register for which the police did not have a search warrant.

A motion to dismiss these charges was filed in City Court of St. Louis on March 19, 1975, and was overruled on April 9, 1975. In summary, the basis of the motion was that Section 700.130 was 1) unconstitutional in that it was vague; 2) violative of the right to be free from unreasonable searches and seizures; 3) constituted an involuntary servitude; 4) took property

for an alleged public purpose without just compensation; 5) violative of the right of privacy; and 6) denied equal protection and constituted an unlawful delegation of legislative authority to the police.

The motion went on to allege further constitutional infirmities within Ordinance 55784 in that Section 700.031 unlawfully delegated legislative authority to judge the moral character of an applicant for a pawnbroker's license without adequate standards; that Section 700.061 unlawfully delegated legislative power to designate the records which a pawnbroker must have in each transaction; and that Section 700.061 was vague, unreasonable and arbitrary as it stated no standards by which a description of property be made by a pawnbroker.

Upon trial on June 23, 1975, in the City Court, Petitioner was found guilty of both charges and was fined \$10.00 plus costs on each charge. Petitioner on that same day filed a notice of appeal to the Court of Criminal Corrections of the City of St. Louis, Richard J. Brown, J. On August 19, 1975, the same motion to dismiss was filed in the Court of Criminal Corrections. The cases were tried together on October 29, 1975, as the Court reserved rulings on motions to dismiss and allowed trial to begin. The motion was denied on November 17, 1975, the same day upon which Petitioner was again found guilty.

A motion for new trial was filed on December 29, 1975, and overruled on January 9, 1976.

On January 16, 1976, a notice of appeal to the Supreme Court of Missouri was filed. The Supreme Court affirmed on February 14, 1977. *City of St. Louis v. Liberman*, 547 S.W. 2d at 452. Rehearing was denied on March 14, 1977.

Each of the aforementioned motions to dismiss were denied without opinion or other explanation.

REASONS FOR GRANTING THE WRIT

I

The decision below with respect to the warrantless search of the non-public business area of the Petitioner's pawnshop without consent should be reviewed because it ignores the principles of *See v. City of Seattle*, 387 U.S. 541 (1967), in such a manner that will give St. Louis police officers a mandate to disregard the firm guidelines established by this Court with respect to administrative searches. The application of the opinion of the Missouri Supreme Court will lead to the continuous encroachment of the Fourth Amendment rights of individuals such as the Petitioner to an extent which will defy judicial imagination.

In *See*, this Court, as a prerequisite to an administrative search of a place of business, required a warrant because the businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. Warrants were held to be a necessity and a tolerable limitation on the right to enter upon and inspect commercial premises and the decision to enter and inspect was not to be the product of the unreviewed discretion of the enforcement officer in the field. A similar result occurred in *Mancusi v. De Forte*, 392 U.S. 364, 372 (1968).

The decision of the Missouri Supreme Court should be reviewed because that court failed to face the issue and instead found "tacit" consent for the search as the result of acquiescence to a claim by the police of lawful authority under the ordinance. As this Court pointed out in *Camara v. Municipal Court*, 387 U.S. 523, 526 (1967), the police officers were not relieved of the requirement under the Fourth Amendment of obtaining a warrant because the ordinance gave them a right

of inspection. In addition, the conclusion of the Missouri Supreme Court that there was "tacit" consent for the search conflicts with the standards of this Court in *Bumper v. California*, 391 U.S. 543, 548 (1968), which require a demonstration of free and voluntary consent rather than a mere acquiescence to a claim of lawful authority. The departure from these standards and the other principles of this Court previously specified require a review and remedy by this Court.

II

The decision of the Missouri Supreme Court should also be reviewed because it is directly in conflict with the decisions of this Court in *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972), and *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952). Those decisions require a penal ordinance, such as the one presently under scrutiny, to inform those who are not subject to it what conduct on their part will render them liable for the penalties it carries. It must contain an ascertainable standard of guilt and not be so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

The Missouri Supreme Court failed to adequately meet this issue but concluded that the ordinance was not vague, doubtful or uncertain. The evidence and record clearly indicated that the police officers who testified speculated with respect to the meaning of such terms as "proper camera," "law enforcement officer," and "a full description of all such property" which were not defined by the ordinance. The guess of each of the officers as to the meaning of these terms was different and the Petitioner was forced to speculate with respect to what conduct would render him criminally liable. As a direct result of the vagueness, doubtfulness, and uncertainty of the ordinance, the Petitioner was never provided with a definite warning as to the

prescribed conduct and requires the review of this Court to safeguard the right of the Petitioner to due process as guaranteed by the Fourteenth Amendment.

III

Further review by this Court of the opinion of the Missouri Supreme Court is necessitated to insure the right of the Petitioner to equal protection of the law as guaranteed by the Fourteenth Amendment. The ordinance violates the holdings of this Court in *Johnson v. Robison*, 415 U.S. 361, 374-75 (1974) and *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920), which require that a legislative classification must be reasonable rather than arbitrary and rest upon some ground of difference having a fair and substantial relation to the legislation so that all persons similarly circumstanced should be treated alike. The ordinance in this case singles out pawnshops from second-hand stores, junk dealers, and antique shops when these businesses are substantially the same. The only basis for the distinction appears to be that customers of a pawnshop are more likely to be indigent or of lower income, a method of discrimination denounced by this Court on a number of occasions.

The decision of the Missouri Supreme Court rested upon a number of old decisions dealing with the police power and which essentially ignored equal protection arguments. As a result of the failure of the Missouri Supreme Court to closely examine the disparate treatment to businesses similarly situated without a rational basis and based on an invidious factor, the review of this Court is necessary.

IV

Additional review by this Court of the opinion of the Missouri Supreme Court is warranted because of the deprivation of Petitioner's right to be free from the taking of his property

and interference with his business without compensation and without an opportunity to be heard. The Missouri Supreme Court overlooked the evidence within the record which demonstrated the money which the Petitioner lost in order to comply with the ordinance and the interference which resulted to his business. The state court also ignored a number of opinions of this Court and other decisions which this Court chose to let stand. In *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571-72 (1972), and *United States v. General Motors Corporation*, 323 U.S. 373, 378 (1945), money was held to constitute property within the constitutional provisions of the Fifth Amendment. The right to conduct a lawful business has also been held to be a property right within the protection of the Fifth and Fourteenth Amendments. *United States v. Tropicano*, 418 F.2d 1069, 1076 (2d Cir. 1969), *cert. denied*, 397 U.S. 1021 (1970). The Petitioner was never afforded notice and an opportunity to be heard at a meaningful time and in a meaningful manner before his property was taken, as required by *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972). The City of St. Louis never demonstrated any public interest which required the taking and that the means selected were reasonably necessary for the accomplishment of that purpose without being unduly oppressive upon individuals such as the Petitioner as specified by *Goldblatt v. Town of Hempstead, New York*, 369 U.S. 590, 594-95 (1962).

In light of the large number of conflicts with the decisions of this Court, the opinion of the Missouri Supreme Court must be reviewed.

V

Review by this Court of the opinion of the Missouri Supreme Court is warranted because that court failed to give full consideration of the right of the Petitioner and his customers to

privacy from unwarranted governmental intrusion as specified by *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) and *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). The state court also failed to give proper application of the decisions of this Court with respect to the standing of the Petitioner to raise the constitutional right of his customers to privacy. This standing of the Petitioner was based on his professional relationship with his customers. A similar professional relationship was recognized as an adequate basis of standing in *Griswold v. Connecticut*, 381 U.S. 479 (1965). In addition, the Petitioner's standing is greater than the party in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), who was allowed to assert the rights of potential students and their parents.

The confiscation of 1,500 photographs on one occasion and 500 photographs on another without a warrant grossly violated the right of the Petitioner's customers to privacy. In addition, the warrantless inspections of the pawn register violated the right of privacy of both the Petitioner and his customers. As a result of the failure of the state court to recognize the essence of the right to privacy and to correctly apply the decisions of this Court involving standing, the Petitioner and his customers have been deprived of their rights to privacy as guaranteed by the Fourth, Fifth, and Fourteenth Amendments and will continue to be so deprived unless this Court reviews the decision of the Missouri Supreme Court.

VI

The decision below should be reviewed for the further reason that the issue of compulsion of an involuntary servitude forced upon an individual engaged in an occupation and career by an ordinance has never been decided by this Court. The Petitioner had been engaged in the profession of a pawnbroker when Ordinance No. 55784 suddenly required him to take pictures of all

of his customers, incur the cost of renting a camera, purchasing film, and developing the photographs, surrendering photographs and film to police officers on demand, and involuntarily transforming his pawnshop into a police sub-station to aid in the recovery of stolen or lost merchandise and the apprehension of thieves. As a result of the compulsion to perform these tasks, the Petitioner has been forced to abandon his livelihood or submit to an involuntary state of servitude. With this alternative, the Petitioner cannot, as erroneously held by the state court, be said to have voluntarily consented to the condition. Since the Thirteenth Amendment is an absolute declaration that involuntary servitude should not exist in any part of the United States, *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971), the review of the decision of the Missouri Supreme Court by this Court is the only opportunity for the Petitioner to be freed from his current status of involuntarily serving the police department of the City of St. Louis.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari be granted.

BERNARD SUSMAN

Attorney for Petitioner

722 Chestnut Street, Suite 918

St. Louis, Missouri 63101

314-621-6043

RANDOLPH E. SCHUM

Attorney for Petitioner

No. 1 South Church

Belleville, Illinois 62221

618-271-1800

APPENDIX

APPENDIX A

Supreme Court of Missouri
En Banc

Opinion Entered February 14, 1977

City of St. Louis,		} No. 59,389.
vs.	Respondent,	
Joseph H. Liberman,	Appellant.	

Appeal from the St. Louis Court of Criminal Correction
The Honorable Richard J. Brown, Judge

This is an appeal by Joseph H. Liberman (defendant) from two judgments of conviction of violations of ordinances of the City of St. Louis regulating pawnbrokers.

Defendant, a pawnbroker in the City of St. Louis, was charged by information filed in case No. 158293 in City Court with violation in November, 1974, of § 700.130 of Ordinance No. 55784 of the City of St. Louis by unlawfully accepting for pawn a saxophone without making a photograph of the person from whom it was received and of the receipt or pawn ticket given to such person. He was also charged by information in case No. 158294 with violation in November, 1974, of § 700.061¹

¹ The provisions of these two sections of Ordinance No. 55784 are summarized in *Liberman v. Cervantes, Mayor of City of St. Louis, et al.*, 511 S.W.2d 835, 837 (Mo. 1974), a declaratory judgment action in which the defendant herein sought to have this ordinance declared void on the ground that it violated certain provisions of the federal and state constitutions.

of Ordinance No. 55784 by unlawfully failing to keep a register of the loan made on the saxophone showing the photograph number and the age of the person who left the saxophone on deposit as collateral security as well as his social security number or his motor vehicle operator or chauffeur's license number. Motions to dismiss these informations attacking the constitutionality of Ordinance No. 55784 were overruled and, upon subsequent trial in City Court, defendant was convicted and fined \$10 (plus costs) in each case. He appealed from these judgments to the St. Louis Court of Criminal Correction where he again filed a motion to dismiss attacking the ordinance as unconstitutional and void because violative of designated provisions of the federal and state constitutions. This motion was also overruled and, as stated, the trial of the charges resulted in conviction ² and this appeal. We affirm.

The trier of facts reasonably could find from the evidence that Dorian Isaac pawned a saxophone in early November, 1974, at defendant's pawnshop and received a pawn ticket therefor; that officers of the St. Louis police department assigned to the pawnshop squad, without a search warrant but with consent of the person in charge thereof, made a routine examination of defendant's books and records in the private area of defendant's place of business on November 18, 1974, during which they found listed the saxophone pawned by Mr. Isaac bearing a serial number identical to one listed with the police department as lost or stolen; that defendant did not make a photograph of Mr. Isaac or the pawn ticket given him as required by § 700.130, supra; that the pawn register book contained the name and address of Mr. Isaac and a notation of the transaction with him, but did not contain information as to his age or social security number or his motor vehicle operator or chauffeur's license number (and, of course, did not show a

² The punishment imposed on conviction in the St. Louis Court of Criminal Correction was the same as that imposed on conviction in the St. Louis City Court.

photograph number) as required by § 700.061, supra. The evidence is sufficient to sustain conviction of violation of these sections of the ordinance. There is also evidence that the officers took the saxophone, gave defendant a receipt therefor, and that one of them marked the pawn register book that it had been "seized" by the police department on the date of this inspection.

The first point briefed by defendant is that his conviction should be reversed because his right under the federal and state constitutions³ to be secure against unreasonable searches and seizures was violated by "the warrantless search of the nonpublic business area of the pawnshop without consent, the seizure of the saxophone, and the demand for photographs and film."

The evidence does not support the assertion in this point that the officers made a search of the nonpublic business "area" of the pawnshop or any other area thereof.⁴ Defendant does not point to any evidence of such search and we have found none in our examination of the record. What the officers did do was examine defendant's books and records as required by the ordinance, and this examination was made while they were in the private or nonpublic business area with the tacit permission of the person then in charge of the business.

The substance of this point is stated in his argument to be that the ordinance is unconstitutional on its face, because it re-

³ Fourth Amendment of the Constitution of the United States and Mo. Const. Art. I, § 15.

⁴ The pawnshop is divided, apparently for security purposes, into two areas by a partition wall (in which there is a door near one end) which extends from floor to ceiling and wall to wall. The partition wall (and door) is solid from the floor up to a counter top and above the counter it is made up of closely-spaced vertical iron bars. The area open to the pawnshop's patrons is that part of the building from the partition wall to the front door. On the other side of this wall is the nonpublic area where defendant keeps his books and records and money in a large metal safe and it is from the security of this point that he deals with his patrons on the other side when handling money.

quires him to submit to demands to inspect his books and to demands to surrender photographs and property, all without a search warrant or his voluntary consent.

In *Lieberman v. Cervantes*, supra (511 S.W.2d at 837, 838) the court said:

"Requiring pawnbrokers to take photographs of customers and make them available to law enforcement officers upon request does not violate search and seizure guarantees. It has long been established that the state may validly regulate the business of pawnbrokers, which is a privilege, not a right, 'and he who avails himself of it, and derives its benefits, must bear its burdens, and conform to the laws in force regulating the occupation, if not illegal. * * *' *City of St. Joseph v. Levin*, 128 Mo. 588, 31 S.W. 101, 102-103 (1895). This business is one of a class where the strictest police regulation may be imposed. 54 Am. Jur. 2d Moneylenders and Pawnbrokers § 3, p. 597. The requirement of photographs is reasonably connected with the object and purpose of the ordinance as a whole, which is 'to keep the pawnbrokers' business free from great abuse by thieves disposing of stolen goods in their shops. They are all made in the interest of the public, and are intended for the detection and prevention of crime.' *Idem*, 31 S.W. 1. c. 103; 54 Am. Jur. 2d Moneylenders and Pawnbrokers § 5, p. 600. This requirement is akin to the requirement that pawnbrokers' records be kept, produced and opened for inspection by designated public officials, upheld because it has a direct relation to the prevention of crime and the detection and apprehension of criminals, 54 Am. Jur. 2d Moneylenders and Pawnbrokers § 5, p. 600 (see also 79 C.J.S. Searches and Seizures § 36, p. 803), and compares with the requirement of fingerprinting of persons from whom pawnbrokers receive goods, which has been upheld as not improperly interfering with personal liberty. *Idem*."

The requirements of the ordinance that pawnbrokers' records be kept and available for examination by police officers of the

city, and that photographs of his customers be taken and made available to such officers, are a valid and proper exercise of the police power and do not infringe the constitutional guaranty against unreasonable search and seizures or defendant's right to privacy.

Other points briefed by defendant in this case which were decided against him in *Lieberman v. Cervantes*, supra, are:

1. That the ordinance is vague and uncertain because it fails to state or define with particularity such terms as "proper camera," "law enforcement officers," and "full description of all such property" and therefore violates Mo. Const. Art. I, § 10 and the due process clause of the Fourteenth Amendment. 511 S.W.2d at 838[3-7].

2. That the regulatory requirements of the ordinance are confiscatory and result in a "taking" of defendant's property without compensation or prior notice and therefore violate Mo. Const. Art. I, § 26 and the due process clause of the Fifth and Fourteenth Amendments. 511 S.W.2d at 838-839[8,9].

3. That the warrantless inspection of defendant's pawn register book and the seizure of photographs of his customers without consent violates his and his customers' right to privacy guaranteed by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. 511 S.W.2d at 837[1] and 839[10].

4. That § 700.031 of the ordinance is unconstitutional on its face because it unlawfully delegates to the police commissioners authority to pass upon the moral character of applicants for a pawnbroker's license without specifying what standards they are to employ in determining whether an applicant is of good moral character. 511 S.W.2d 839-840[12].

This section of the ordinance does not unlawfully delegate to the license collector authority to designate identifying insignia

to be required for identification of the twenty items named in this section of the ordinance. In the first place, the ordinance does not require, authorize or permit the collector to designate such identifying insignia. Subsection c of § 700.031 provides that before issuance of a license by the collector the applicant shall have agreed that he will not accept for pawn or purchase any one of twenty named items (e.g., camera, radio, tape recorder or player, dictating machine, television set) "unless such item shall have plainly visible thereon the manufacturer's serial number or other identifying insignia." The requirement that the item have other identifying insignia plainly visible thereon where there is no manufacturer's serial number is reasonably connected with the general purpose and object of the ordinance as expressed in *Liberman*, supra, at 837, and is made in the interest of the public to facilitate the detection and prevention of crime. The words "other identifying insignia" in the context of this ordinance are sufficiently explicit and so well understood by the average person that they require no further designation or definition.

We have considered the additional authorities cited by defendant on the above points and are not persuaded that our decision in *Liberman v. Cervantes*, supra, should be abandoned. We adhere to that decision.

Two additional points briefed by defendant in this case, not presented in *Liberman v. Cervantes*, supra, are that the ordinance is unconstitutional on its face, because:

(1) it subjects him to involuntary servitude in violation of the Thirteenth Amendment of the U. S. Constitution by compelling him to aid the police in their efforts to capture thieves; and,

(2) it unreasonably singles out pawnshops for regulation despite the similar facility for secondhand stores, junk dealers and antique shops to serve as ready and convenient markets

for stolen goods, thus invidiously discriminating against him in violation of Mo. Const. Art. I, § 2 and the equal protection clause of the Fourteenth Amendment.

The critical factor with respect to defendant's present and past attempts to establish the unconstitutionality of this ordinance is that its regulatory provisions represent an exercise of the police power. Each theory upon which he relies in asserting his constitutional challenge is tempered and diluted by the broad discretion and deference accorded to the legislature in exercising its police power to determine both *what* areas will be regulated in the public interest, and to *what extent* such regulation can go. See: *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423-424 (1952); *State v. Day-Brite Lighting, Inc.*, 362 Mo. 299, 240 S.W.2d 886, 893[6,7] (banc 1951). And, generally speaking, the municipal power to regulate by legislation pursuant to the police power is equivalent to State power. *McClellan v. Kansas City*, 379 S.W.2d 500, 504[1-5] (Mo.banc 1964). The determination of what considerations properly call for the exercise of the police power is primarily a legislative, not a judicial question. *Id.* 379 S.W.2d at 505 [6,7]. And, we do not second-guess the judgment of the legislative body as to the wisdom, adequacy, propriety, expediency or policy of the legislative act in question. *State v. Ewing*, 518 S.W.2d 643, 648[7] (Mo. 1975), and cases cited therein. Moreover, this court has repeatedly and consistently upheld the legislative judgment to regulate pawnbrokers, by adopting the view that those choosing to engage in the business of pawnbroking may be constitutionally subjected to strict regulation through statutes and ordinances enacted pursuant to the police power. *City of St. Joseph v. Levin*, 128 Mo. 588, 31 S.W. 101, 102-103 (1895); *State v. Lawson*, 352 Mo. 1168, 181 S.W.2d 508, 512[4,5] (1944); *Liberman v. Cervantes, et al.*, supra, 511 S.W.2d 835, 837[1,2] (Mo.1974). We reaffirm this view.

We turn to defendant's two newly-asserted constitutional challenges. As with the other constitutional theories argued by defendant in the first *Lieberman* case and in this case, these two attacks upon the constitutionality of the ordinance are also affected by the police power principle.

Defendant contends that the various provisions of the ordinance which require him to arrange for use of a camera, to photograph all his customers, surrender photos to police upon request, keep his books open for inspection, etc., bring about involuntary servitude, in that he is forced to labor against his will for the benefit of police, thereby transforming his pawnshop "into a police sub-station to aid in the * * * apprehension of thieves." The point is without merit.

As previously stated, the pawnbroking business is one which may be subjected to strict regulation under the police power in order to carry out a perfectly valid legislatively-determined public need. Defendant has voluntarily chosen to engage in this regulated enterprise, and it is true that in connection therewith he must participate in some uncompensated service in order to conform to the intended public needs and purposes manifested by the ordinance.

Although the Thirteenth Amendment has been broadened somewhat in more recent times, it is important to remember that the amendment was adopted with reference to conditions that had existed since the foundation of our government. In such context, "the term involuntary servitude was intended to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results * * * The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of essential powers." *Butler v. Perry*, 240 U.S. 328, 332 (1916).

The police power to regulate the business of pawnbroking is one such "essential power" by which the government may, with-

out running afoul of the Thirteenth Amendment, exact by law this small measure of uncompensated, but not "undesirable," service to meet the need of the public as a whole. A compelling factor for rejecting defendant's claim of involuntary servitude, however, is the fact of his voluntary venture into the pawnbroking business and the attendant regulations. As counsel for the city very accurately pinpoints it: "If [he] feels himself enslaved, he is responsible for his own bondage."

Defendant's precise contention with respect to his equal protection claim is that the ordinance, which requires photographs and other measures to deter fencing of stolen property and to aid in the apprehension of thieves, creates an unreasonable classification by singling out pawnbrokers for regulation, inasmuch as junk dealers, secondhand shops, and antique businesses are also likely markets for stolen property. He claims this disparate treatment given "similarly-situated" businesses is without a rational basis and results in invidious discrimination. This contention is also without merit.

It should be noted at this point that, apart from defendant's assertion that junk dealers, secondhand shops, etc., are businesses similarly-situated to pawnshops, there is little, if any, evidence in the record to support the proposition that these businesses are at all comparable. Nevertheless, we consider the merits of his equal protection claim. The rules of judicial review of a legislative classification which is challenged as a denial of equal protection are settled:

"The equal protection clause does not forbid a State to create classes in the adoption of regulations under its police power, but it allows wide discretion, precluding only that done without any reasonable basis and therefore arbitrary, or as otherwise stated, it forbids invidious discrimination. *Morey v. Dowd*, 354 U.S. 457 * * * (1957); *Kansas City v. Webb*, 484 S.W.2d 817 (Mo.); *Howe v. City of St. Louis*, 512 S.W.2d 127, 132[4]

(Mo.banc 1974). One who assails the classification has the burden of showing that it does not rest upon any reasonable basis and is purely arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911). And, a classification will be sustained if any state of facts reasonably can be conceived to justify it. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961); *State v. Ewing*, 518 S.W.2d 643, 648 [7] (Mo.1975).

It is easy to perceive a reasonable basis for the legislative decision to regulate pawnbrokers by means of this ordinance in order to aid law enforcement. Beyond this threshold finding that the classification as to pawnbrokers rests upon a ground relevant to the achievement of the legislative objective and is, therefore, not purely arbitrary, we must disregard all matters relating to the wisdom, adequacy, propriety, expediency or policy of the act in question. *State v. Ewing*, supra, 518 S.W.2d at 648[7]. The same deference is accorded city ordinances. *McClellan v. Kansas City*, supra, 379 S.W.2d at 504[1-5]; *Howe v. City of St. Louis*, supra, 512 S.W.2d at 132[4,5].

Defendant urges invalidity of the ordinance on equal protection grounds for its failure to extend its regulation to junk dealers, and all other businesses which might present possible variations of the potential evil which the ordinance is designed to protect against. However, a legislative classification assailed on equal protection grounds is not rendered arbitrary or invidious merely because it is under-inclusive. Clearly, there is no constitutional requirement that regulation must reach every class to which it might be applied; that the legislature must regulate all or none. *State v. Ewing*, supra, 518 S.W.2d at 648[6]. The state (or city) is free to regulate one step at a time, recognizing degrees of harm and addressing itself to phases of a problem which presently seem most acute to the legislative mind. See: *Williamson v. Lee Optical*, 348 U.S. 483, 488-489 (1955); *State v. Ewing*, supra, 518 S.W.2d at 648[6], and cases cited therein.

We decline to strike down this ordinance. It has not been demonstrated that it is an unreasonable or arbitrary exercise of the police power of the city in any of the respects asserted.

The judgment is affirmed.

FRED L. HENLEY
Judge

All concur.

Rendlen, J., not participating.

APPENDIX B

Clerk of the Supreme Court
State of Missouri
Jefferson City, Missouri
65101

Thomas F. Simon
Clerk

Telephone (314) 751-4144
Mail P. O. Box 150

March 14, 1977

Mr. Randolph E. Schum
322 First National Bank Building
East St. Louis, Illinois 62201

In re: City of St. Louis v. Joseph H. Liberman,
No. 59389

Dear Sir:

This is to advise that the Court this day has made the following order in the above-entitled cause:

"Appellant's motion for rehearing overruled."

Yours very truly,

/s/ THOMAS F. SIMON
Clerk

cc: Mr. Bernard Susman, Suite 918, 722 Chestnut, St. Louis,
Mo.

Mr. Francis Ruppert, 8011 Clayton Road, St. Louis, Mo.

Mr. Jack Koehr, City Counselor, 314 City Hall, St. Louis,
Mo.

APPENDIX C

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

" . . . nor shall private property be taken for public use, without just compensation."

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ordinance 55784, City of St. Louis, Missouri

An ordinance to amend Chapter 700 of the Revised Code of the City of St. Louis, as amended by Ordinance 55784, pertaining to the licensing of pawnbrokers by repealing Sections 770.031, 770.061 and 770.130 thereof and enacting three (3) new sections in lieu thereof to be known as Sections 770.031, 770.061 and 770.130, pertaining to the same subject matter and requiring proposed licensees to be of good moral character; to install camera equipment and to photograph persons selling articles or pledging pawns to them under certain specified circumstances; to consent to inspection of photographs and register records by law enforcement officers; to require certain purchases and pawns to have plainly visible manufacturer's serial number or other insignia as a precondition for purchase or acceptance of such articles as pawns; requiring the keeping of a register of all articles purchased by them or pawned to them showing the date of purchase or pawn, the name, current address and age of the seller or pledger, a full description of the property, the time when the loan falls due, the amount of the purchase or loan with the interest charged if a loan, the photograph number if applicable, and the description and identifying number of a numbered and pictured identification card or badge which must be produced prior to acceptance of property as pledge or pawn; requiring that a pawnbroker photograph any person selling or pawning an article who shall fail to produce such numbered and pictured identification card or badge requiring all such information and photographs to be made available to any law enforcement officer on request at any time within one year following the receipt of any article and the taking of any photograph.

Be It Ordained by the City of St. Louis, as Follows:

Section One. Chapter 700 of the Revised Code of the City of St. Louis is hereby amended by repealing Sections 700.031,

700.061 and 700.130 of said Chapter as amended by Ordinance 55784.

Section Two. Three new sections to be known as Sections 700.031, 700.061 and 700.130 of the Revised Code of the City of St. Louis are hereby enacted and shall read as follows:

700.031. Application for license—Every application for a license hereunder shall be made in writing to the license collector and shall state where the business is to be carried on. Before any license shall be issued, the license collector shall procure from the police commissioners, an endorsement on the back of the application therefor:

a. that in their opinion the applicant has a good moral character;

b. that the applicant has installed a proper camera and agreed to use such equipment in the manner set forth in Section 700.130 herein, and has further agreed to make the photographs taken pursuant to Section 700.130 herein available to any law enforcement officer upon request;

c. that the applicant has agreed not to accept as collateral security or to purchase any camera, radio, television set, lawn mower, typewriter, adding machine, calculating machine, copying machine, duplicating machine, tape recorder, tape player, cash register, still or moving picture projector or offset projector, dictating machine, record player, electric buffer, electric polisher, electric floor waxer, unless said item shall have plainly visible thereon the manufacturer's serial number or other identifying insignia;

d. that the applicant has consented to the inspection of the register required to be kept by Section 700.061 herein by law enforcement officers upon demand, on the business premises of the applicant and during applicant's regular business hours, and has further consented to deliver photographs taken by him pur-

suant to Section 700.130 herein to law enforcement officers in the manner set forth in said section.

700.061. Register to be kept—Every pawnbroker shall keep a register of all loans and purchases of all articles effected or made by him, which register shall show with respect to each such loan or purchase the following:

- a. the date on which the loan or purchase was made;
- b. the name, current address and age of the person leaving property of any description on deposit as a collateral security or as a delivery on sale in connection with the loan or purchase;
- c. a full description of the property purchased or received on deposit as collateral security;
- d. the manufacturer's identifying insignia or serial number, if applicable;
- e. the time when the loan falls due;
- f. the amount of purchase money or the amount loaned;
- g. the interest charged;
- h. the photograph number, if a photograph is required pursuant to Section 700.130 herein.

In addition, the pawnbroker shall require each person leaving any description of property on deposit as collateral security or as delivery on sale shall produce some numbered form of identification, which shall include as part of its composition a photograph of the person identified thereby. Acceptable forms of such identification shall include, but not be limited to valid motor vehicle operator's or chauffeur's licenses, passports, and identification cards or badges issued by federal, state and local governments, or any subdivision or agency thereof, or by any legitimate business entity.

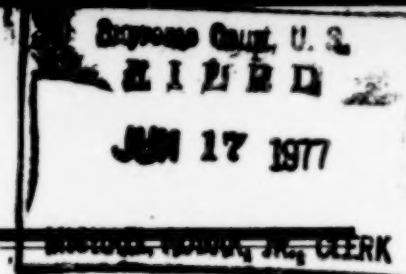
After such identification has been produced, the pawnbroker shall record in the aforementioned register both a description of the type of identification produced, and the identifying number written thereon.

In the event that a person leaving property as security or for sale shall be unable to produce the required numbered and pictured identification, the pawnbroker shall photograph said person pursuant to the provisions of Section 700.130 herein.

Further, the pawnbroker shall give the party negotiating or selling, a plain written or printed ticket for the loan, and a plain written or printed receipt of the articles purchased having on each a copy of the entries required by this Chapter to be kept in his register. For the ticket or receipt he shall not be entitled to make any charge.

700.130. Should a person leaving any description of property as collateral or for sale fail to produce the numbered and pictured identification required by Section 700.061 herein, the pawnbroker shall, before accepting such property, make a photograph of the person from who such article or property is being received along with the receipt or pawn ticket given to such person; nor shall any pawnbroker refuse to deliver such photograph to any law enforcement officer upon request in connection with a specific item of stolen property, within one year following the date such photograph is taken.

Every pawnbroker shall display a notice to his customers in a prominent place to the effect that he is required by city ordinance to photograph every person pawning or selling an item to him, who is unable to produce identification of the type required by Section 700.061.



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1769

JOSEPH H. LIBERMAN,
Petitioner,

v.

CITY OF ST. LOUIS,
Respondent.

CORRECTED APPENDIX

**Pages A-14 to A-17 to Petition for a Writ of Certiorari
to the Supreme Court of the State of Missouri**

BERNARD SUSMAN
722 Chestnut Street, Suite 918
St. Louis, Missouri 63101
314-621-6043
Attorney for Petitioner

RANDOLPH E. SCHUM
322 First National Bank Building
East St. Louis, Illinois 62201
618-271-1800
Attorney for Petitioner

ROBERT M. SUSMAN
722 Chestnut Street, Suite 918
St. Louis, Missouri 63101
314-621-6043
Attorney for Petitioner



EXPLANATION

Pages A-14 to A-17 of the Appendix to Petitioner's "Petition for Writ of Certiorari" purporting to be a copy of Ordinance No. 55784 is incorrect and is not a copy of the said Ordinance. Said pages have been printed by inadvertence and should be disregarded in their entirety.

The following pages of this "corrected Appendix" contains a correct copy of the said Ordinance No. 55784. The pages herein are designated "Corrected Pages A-14 to A-17" and should be substituted for the incorrect ones.

Petitioner regrets any inconvenience this may cause to the Court and apologizes for the error.

BERNARD SUSMAN
Attorney for Petitioner

Ordinance 55784

(Com. Sub. B.B. No. 112 as Amd.)

An ordinance to amend Chapter 700 of the Revised Code of the City of St. Louis, pertaining to the licensing of pawn-brokers by repealing Sections 700.030 and 700.060 thereof and enacting 5 new sections in lieu thereof to be known as Sections 700.031, 700.061, 700.130, 700.140 and 700.150, pertaining to the same subject matter and requiring proposed licensees to be of good moral character; to install camera equipment and to photograph persons selling articles or pledging pawns to them; to require certain purchases and pawns to have plainly visible manufacturer's serial number or other identifying insignia as a precondition for purchase or acceptance of such articles as pawns; requiring the keeping of a register of all articles purchased by them or pawned to them showing the

date of purchase or pawn, the name and age of the seller or pledger; his vehicle operator's or chauffeur's license number or social security number; a full description of the property; the amount of the purchase or loan with the interest charged if a loan, giving a receipt bearing the information required hereby thereon; requiring all such information and photographs to be made available to any law enforcement officer on request at any time within one year following the receipt of any article and the taking of any photograph and authorizing the revocation of license, after hearing, for any willful violation of the provisions hereof.

Be it ordained by the City of St. Louis, as follows:

Section One. Section 700.030 and Section 700.060 of Chapter 700 of the Revised Code of the City of St. Louis are hereby repealed.

Section Two. Sections 700.031, 700.061, 700.130, 700.140, and 700.150 of said Chapter 700 are hereby enacted to read as follows:

700.031. Application for license—Every application for a license hereunder shall be made in writing to the license collector and shall state where the business is to be carried on. Before any license shall be issued, the license collector shall procure from the police commissioners, an endorsement on the back of the application therefor:

a. that in their opinion the applicant has a good moral character;

b. that the applicant has installed a proper camera and agreed to use such equipment to photograph every person and receipt or pawn ticket given to such person in connection with all loans and purchases of all articles effected or made by him, and to

make such photographs available to any law enforcement officer upon request;

c. that the applicant has agreed not to accept as collateral security or to purchase any camera, radio, television set, lawn mower, typewriter, adding machine, calculating machine, copying machine, duplicating machine, tape recorder, tape player, cash register, still or moving picture projector or offset projector, dictating machine, record player, electric buffer, electric polisher, electric floor waxer, unless said item shall have plainly visible thereon the manufacturer's serial number or other identifying insignia.

700.061. Register to be kept.—Every pawnbroker shall keep a register of all loans and purchases of all articles effected or made by him, which register shall show the date of all loans or purchases, and the names of all persons who have left any description of property on deposit as a collateral security or as a delivery on sale thereof. Opposite such name and date shall be written in plain hand the person's age and motor vehicle operator's or chauffeur's license number, or social security number or other identification of public record designated in a list of such items established by the license collector; a full description of all such property purchased or received on deposit as collateral security, the manufacturer's identifying insignia or serial number if applicable, the time when the loan falls due, the amount of purchase money or the amount loaned and the interest charged and the picture number. In addition to this, he shall give the party negotiating or selling, a plain written or printed ticket for the loan, and a plain written or printed receipt of the articles purchased having on each a copy of the entries required by this Chapter to be kept in his register. For the ticket or receipt he shall not be entitled to make any charge.

700.130. No pawnbroker shall accept any article or property as collateral security, or purchase any article or property unless he shall make a photograph of the person from whom

such article or property is being received along with the receipt or pawn ticket given to such person; nor shall any pawnbroker refuse to deliver such photograph to any law enforcement officer upon request in connection with a specific item of stolen property, within one year following the date such photograph is taken. Every pawnbroker shall display a notice to his customers in a prominent place to the effect that he is required to photograph every person pawning or selling an item to him, by city ordinance.

700.140. No pawnbroker shall accept as collateral security or purchase any camera, radio, television set, lawn mower, typewriter, adding machine, calculating machine, copying machine, duplicating machine, tape recorder, tape player, cash register, still or moving picture projector or offset projector, record player, dictating machine, electric buffer, electric polisher, or electric floor waxer, unless said item shall have plainly visible thereon the manufacturer's serial number or other identifying insignia.

700.150. The license collector of the City of St. Louis shall have power and authority to revoke any license issued under Chapter 700 for any willful violation by a licensed pawnbroker of any of the provisions or conditions contained therein; provided such license shall be revoked only after the licensee shall have been notified in writing at his place of business of the violations complained of and shall have been afforded a reasonable opportunity to have a hearing thereon before the license collector. No license in effect on the effective date of this ordinance shall be revoked for a violation of Section 700.130 until after this ordinance has been in effect for 90 days.

Approved: January 7, 1971.

State of Missouri }
City of St. Louis }^{ss.}

I, the undersigned Register of said City do hereby certify the foregoing to be a true copy of

Ordinance No. 55784

Approved: January 7, 1971

the original of which is on file in this office.

Witness my hand and the seal of the City of St. Louis this
21st day of August, 1975.

(Illegible)
Register

Supreme Court, U. S.
FILED

SEP 12 1977

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. **76-1769**

JOSEPH H. LIBERMAN,
Petitioner,

v.

CITY OF ST. LOUIS,
Respondent.

BRIEF

**In Opposition to Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri**

JACK L. KOEHR
City Counselor
EUGENE P. FREEMAN
Deputy City Counselor
Room 314, City Hall
St. Louis, Missouri 63103
314-453-3361
Attorneys for Respondent

JUDITH A. RONZIO, Of Counsel
Assistant City Counselor

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions and Statutes Involved	3
Statement of the Case	3
Argument	8
Conclusion	15

Table of Cases

Bayce Motor Lines v. United States, 342 US 337, 96 L.Ed. 367, 72 S.Ct. 329 (1952)	10
Bumper v. California, 391 US 543, 20 L.Ed. 797, 88 S.Ct. 1788 (1968)	8
Butler v. Perry, 240 U.S. 328 at 332, 60 L.Ed. 672, 36 S.Ct. 258 (1916)	14
City of St. Louis v. Joseph H. Liberman, 547 SW2d 452 (1977)	12
Grayson v. Harris, 267 US 352, 69 L.Ed. 652, 45 S.Ct. 317 (1932)	8
Liberman v. Cervantes, 511 S.W. 2d 835 (1974)	12-13
McGowan v. Maryland, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961)	11

Morey v. Dowd, 354 U.S. 457, 1 L.Ed.2d 1485, 77 S.Ct. 1344 (1957)	11
Portland R. Co. v. Railroad Commission, 229 US 397, 57 L.Ed. 1248, 33 S.Ct. 820 (1913)	8
United States v. Biswell, 406 US 311, 32 L.Ed.2d 87, 92 S.Ct. 1593 (1972)	9, 13
Williamson v. Lee Optical, 348 U.S. 483, 99 L.Ed. 563, 75 S.Ct. 461 (1955)	12

Statutes and Miscellaneous Cited

St. Louis Ordinance 55784	2, 3, 4, 9, 10, 11
U.S. Const., Fourth Amendment	2, 13, 14
U.S. Const., Fifth Amendment	2
U.S. Const., Fourteenth Amendment	2, 11
18 U.S.C.A. § 923(g)	9
Const. of Mo., Art. I, Sec. 2	11
Am. Jur. 2d Moneylenders and Pawnbrokers, Sections 3 and 5	11
125 ALR 598, Annotation	11

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No.

JOSEPH H. LIBERMAN,
Petitioner,

v.

CITY OF ST. LOUIS,
Respondent.

BRIEF

**In Opposition to Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri**

Comes now the City of St. Louis, a municipal corporation of the State of Missouri, Respondent herein, and respectfully makes its response to Petitioner's Petition for a Writ of Certiorari to the Supreme Court of the State of Missouri.

OPINIONS BELOW

Respondent accepts Petitioner's statement of the Opinion below, and agrees that said Opinion as reproduced in Appendix A, page A-1 of Petitioner's Brief is an accurate reproduction of the Opinion of the Missouri Supreme Court, En Banc, in the case of *City of St. Louis v. Joseph H. Liberman*, which appears at 547 S.W.2d 452.

JURISDICTION

Respondent accepts Petitioner's statement of Jurisdiction.

QUESTIONS PRESENTED

The questions presented for review are as follows:

1. Whether the inspection of petitioner's records in a non-public business area of petitioner's pawnshop by police officer-employees of respondents constituted a "warrantless search," and, if so, whether said action violated petitioner's right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution.
2. Whether Ordinance 55784 is unconstitutionally vague, doubtful and uncertain in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.
3. Whether the business of pawnbroking is a reasonable area of classification for regulation, in view of the equal protection clause of the Fourteenth Amendment of the United States Constitution.
4. Whether Ordinance 55784 compels the taking of petitioner's property without compensation, notice and opportunity for hearing, and, if so, whether said taking violates petitioner's rights pursuant to the Fifth and Fourteenth Amendments of the United States Constitution.
5. Whether Ordinance 55784 and police inspections made pursuant thereto violate the rights of petitioner and his customers to privacy as guaranteed by the Fourth, Fifth and Fourteenth Amendments of the United States Con-

stitution, and whether petitioner has standing to raise this issue on behalf of his customers.

6. Whether Ordinance 55784 violates the prohibition against involuntary servitude contained in the Thirteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent accepts petitioner's statement of the constitutional provisions and statutes involved herein.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case with the following additions.

Glennon O'Connor, a detective with the St. Louis Police Department, testified that he was assigned to the pawnshop section and routinely checked the books of all pawnshops for stolen property with or without specific complaints (Tr. 31-32). O'Connor stated that he and Detective Corporal Lawrence Judge made up the pawnshop detail and that they went to the Easton Loan Company on November 18, 1974, to check the books for all loans made within the last month and a half since their last visit (Tr. 32-33). O'Connor stated that he found a saxophone serial number in the book which corresponded with one which was listed in his records as lost or stolen (Tr. 34). The pawn register was marked seized, Judge put his initials, the department, and the date in the book, and then they informed the appellant they were seizing the saxophone (Tr. 34). The officers then left (Tr. 37).

A few days later the officers returned with a warrant and advised the appellant he was under arrest for failing to take a

photograph and for failing to obtain proper identification. (Tr. 37). O'Connor stated that the pawn register only contained the name and address of the customer plus the transaction without any reference to age, motor vehicle or chauffeur's license or social security number (Tr. 38). O'Connor also asked the appellant to produce a photograph of the transaction but the appellant stated there was no film in the camera (Tr. 40). O'Connor identified Ordinance No. 55784 as the one he was operating under at the time he arrested the appellant.

O'Connor stated that he did not have a search warrant on November 18, 1974 (Tr. 45). He testified that Sol Davis, an employee, let them behind the counter on that day (Tr. 47). The officers did not ask for permission to come behind the counter but informed the employee that they were there to check the books (Tr. 48). Several months before they had been denied access behind the counter (Tr. 49) by the appellant who told them to check the books in the public area in front of the counter (Tr. 51). The officers, on that occasion, refused to check the books in the public area of the store (Tr. 52). O'Connor denied that the officers had ever threatened the appellant with arrest if he refused to allow them behind the counter (Tr. 225).

O'Connor said that an entire cannister of film had been seized from the appellant (Tr. 59). He stated that if the report of lost or stolen property comes from another police force, the picture of the customer is sent to that force (Tr. 61).

O'Connor stated that when items are seized the pawn-broker is shown the serial number and complaint number in the officer's records and later is given a receipt (Tr. 65). The victim is then notified and is given the item after furnishing proof of ownership and signing a receipt (Tr. 62). There is no reimbursement to the pawnbroker for the property (Tr. 62). The photographs required by the ordinance play no role in the recovery of property and only serve to assist in apprehending

thieves (Tr. 72-73). The City of St. Louis did not reimburse pawnshops for the cost of renting a camera, film, and developing (Tr. 77).

Lawarence E. Judge, a member of the pawnship squad, testified that he had never applied for a search warrant prior to making inspections of pawnshops and did not have one on November 18, 1974 (Tr. 154). He claimed that he asked for permission to go behind the counter on November 18, 1974, and did not encounter any opposition (Tr. 163). He also confirmed that the appellant, on one prior occasion, had instructed the officers to examine the books in the public area of the store (Tr. 164). Judge testified that he and his partner had picked up a full cannister of film from the Easton Loan Company and had never returned it (Tr. 160-161). He stated that the photographs play no role in the recovery of stolen property but assist in the investigation (Tr. 159) and help to track down a thief (Tr. 163).

Joseph Liberman, the president of Easton Loan Corporation, Inc. (Tr. 167), was arrested by officers O'Connor and Judge of the pawnshop (Tr. 168, 170). He testified that the officers were not given permission to come behind the counter on November 18, 1974 (Tr. 174). The officers have told him that the Supreme Court has said they don't need his permission to come behind his counter even though he wants them to examine the books on the public side of the counter (Tr. 189). The officers told the defendant he would be arrested for interfering with their duty if he didn't permit them to go behind the counter (Tr. 190). Liberman stated that his employee, Sol Davis, did not have his authority to grant permission to the officers to come behind the counter (Tr. 190).

Liberman testified that, on November 18, 1974, the officers did not exhibit a search warrant and had never exhibited one (Tr. 188). The officers, on November 18, 1974, told the clerk there was a stolen saxophone and never returned it or reimbursed

him for the twenty-five dollars he paid out as a loan on it (Tr. 175). Liberman stated that he is never told what happens to seized articles (Tr. 194). The officers did make an entry in his book when the saxophone was seized and later gave him a receipt (Tr. 215). Liberman, on numerous occasions, had requested the officers to give him a list of stolen property so that he would not make loans on those items, but no list was ever provided (Tr. 191).

Liberman stated that he had never been able to locate a picture of the person who pawned the saxophone and does not know if a picture was taken (Tr. 181). He stated that if no picture was taken, it was not intentional (Tr. 181). He testified that there was film in the camera at the time of the transaction and the camera was used regularly (Tr. 208). Liberman denied telling the officers that there was no film in the camera at the time of the transaction (Tr. 208). Other pictures on that roll developed (Tr. 209), but there was a problem taking pictures because of the lighting (Tr. 210) and the security bars (Tr. 177).

Liberman stated that his customers had complained about having their pictures taken and he had lost business to a pawnshop in Wellston (Tr. 187). A sign in his shop also advised customers that the pawnshop was required by law to take the photographs of its customers (Tr. 214). Liberman testified that he has had to rent a camera for five years at a monthly rental of fifteen dollars and had spent approximately nine hundred dollars (Tr. 182). A cannister of film has two thousand negatives and costs fifteen dollars, including the developing (Tr. 182). One cannister is used a month and the approximate cost for film and developing for five years was nine hundred dollars (Tr. 183). It also required time to take the film out of the camera and arrange for its developing (Tr. 199). Liberman testified that he gives the photographs to the police officers upon request (Tr. 184). In August of 1974 the police seized a cannister with approxi-

mately 1500 pictures on it and never returned it (Tr. 184). In March of 1975 another cannister with approximately 500 photographs was seized and not returned (Tr. 185-186). The officers did not demand a specific photograph on those occasions (Tr. 184, 186).

Liberman complained that Judge, a large man, would always position himself between the counter and a file cabinet in such a way as to disrupt his business (Tr. 179-180). The officers would come in every couple of months and stay for three to four hours (Tr. 203).

ARGUMENT

I

The issue raised by petitioner with respect to an alleged “warrantless search of the non-public business area of Petitioner’s pawnshop” is an inappropriate question for review by certiorari for the following reasons:

To grant certiorari on this issue would be to exert jurisdiction merely to review a decision of a state court upon a question of fact. *Grayson v. Harris*, 267 US 352, 69 L.Ed. 652, 45 S.Ct. 317 (1932); *Portland R. Co. v. Railroad Commission*, 229 US 397, 57 L.Ed. 1248, 33 S.Ct. 820 (1913).

The finding of the Missouri Supreme Court upon the record was that the police officers involved made no search of any area of petitioner’s pawnshop—but, rather, merely inspected petitioner’s records, pursuant to the provisions of the ordinance, while seated in the non-public business area of the shop, and with the “tacit” consent of petitioner’s employee.

In short, the Missouri Supreme Court found that there had been no search. The “tacit” consent, assailed by petitioner as inadequate under *Bumper v. California*, 391 US 543, 20 L.Ed. 797, 88 S.Ct. 1788 (1968), was not tacit consent to a search, but merely tacit consent to the officers’ sitting in a non-public area while examining petitioner’s records.

To grant certiorari on this issue would, further, be to exert jurisdiction in a situation where the challenged law is of narrow application and affects only a very limited class of persons. The law in question is a city ordinance, applicable only within the geographical boundaries of the City of St. Louis. Even within those boundaries, the only persons affected by the ordinance are pawnbrokers. Thus the case would seem to lack

the element of “national import,” frequently cited as being a consideration of major significance in the granting of certiorari.

Indeed, this issue—the lack of widespread import—applies to all of petitioner’s arguments. Because the ordinance is so narrowly-drawn and limited in its application, it would seem to be inappropriate for review by certiorari.

Even if the court were to determine that a warrantless search occurred in the instant case, the decision of the Missouri Supreme Court in upholding such an action is not necessarily in conflict with prior decisions of the United States Supreme Court.

On the contrary, a similar situation exists with respect to the Gun Control Act of 1968, 18 USCA § 923(g), which authorizes official entry during business hours into the premises of any dealer, importer, manufacturer or collector to inspect firearms and records. It is noteworthy that pawnbrokers are classified as dealers under this Act. In *United States v. Biswell*, 406 US 311, 32 L.Ed.2d 87, 92 S.Ct. 1593 (1972), an inspection without warrant made pursuant to this Act was held to be reasonable official conduct under the Fourth Amendment prohibition against unreasonable search and seizure, and, since such a search was based on the authority of a valid statute, the lawfulness of the search did not depend on the consent of the defendants.

II

Certiorari is unwarranted for review of the Missouri Supreme Court’s decision as to whether certain provisions of Ordinance 55784 are unconstitutionally vague inasmuch as the court, in holding that the ordinance was not thus violative of due process, stayed well within the guidelines set forth by this court for determining whether or not an ordinance is so vague as to fail to provide an ascertainable standard of guilt.

Bayce Motor Lines v. United States, 342 US 337, 96 L.Ed. 367, 72 S.Ct. 329 (1952, cited by petitioner in support of his argument on this point, contains perhaps the best explanation of respondent's position. In *Bayce, supra*, this court said:

"A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties . . . But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded." (342 US 337 at 341).

The words in Ordinance 55784 complained of by petitioner—"proper camers," "law enforcement officer," and "a full description of such property"—are words for which "the practical necessities of discharging the business of government" demand a certain flexibility.

From a common sense viewpoint, to be more specific than "proper camers" would be to place an unnecessary burden upon pawnbrokers to purchase or lease a specific type of camera. To make "a full description of such property" more definite would be to set up requirements which pawnbrokers might not be able to fulfill, given the extraordinarily wide variety of items which pass daily through a pawnshop.

"Law enforcement officer" is a term which has been defined and redefined by both state and federal courts, and is one of those terms to which common usage gives a definite meaning and understanding.

III

Certiorari should not be granted with respect to petitioner's argument that Ordinance 55784 is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Constitution of Missouri, 1945, because the ordinance falls well within the scope of prior decisions of this court in similar cases.

Petitioner's primary argument on this point is that Ordinance 55784 creates an allegedly unreasonable classification for the regulation of pawnbrokers, by virtue of the fact that the requirements of the ordinance do not extend also to junk dealers, second-hand shops and antique businesses.

It is well-settled that a State has wide discretion to create classes in the adoption of regulations under its police power, provided only that the classifications have reasonable bases, are not arbitrary and do not give rise to invidious discrimination. *Morey v. Dowd*, 354 U.S. 457, 1 L.Ed.2d 1485, 77 S.Ct. 1344 (1957). Further, such a classification will be sustained if any state of facts reasonably can be conceived to justify it. *McGowan v. Maryland*, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961).

The highest courts of a large number of states, in cases too numerous to cite herein, have held that pawnbrokers constitute such a reasonable classification, and, further, that pawnbroking is that type of activity which warrants the strictest regulations, by virtue of the fact that the nature of the occupation lends itself to exploitation by criminals. See Am. Jur. 2d Moneylenders and Pawnbrokers, Sections 3 and 5; 125 ALR 598, Annotation.

Thus, with the great weight of state court decisions holding that the pawnbroker's business is an individual area which can reasonably be classified as an area for regulation, the question

becomes: Must such a classification, then, in order not to be arbitrary, also include all other types of activities which could conceivably lend themselves to the same evils as does the pawn-broking business.

The answer, of course, is no. It is well-settled that a classification is not rendered arbitrary merely because it is under-inclusive. The regulating legislative body can and must be free to tackle a problem one step at a time, dealing first with those areas where the need is most urgent. *Williamson v. Lee Optical*, 348 U.S. 483, 99 L.Ed. 563, 75 S.Ct. 461 (1955).

Still another reason for denying certiorari on this particular point is that to do otherwise would be to exert jurisdiction to review a finding of fact. The Supreme Court of Missouri specifically found that:

“... [A]part from defendant's assertion that junk dealers, secondhand shops, etc., are businesses similarly situated to pawnshops, there is little, if any, evidence in the record to support the proposition that these businesses are at all comparable. . . .” *City of St. Louis v. Joseph H. Liberman*, 547 SW2d 452 (1977) at 458.

IV

Review on the issue of whether the provisions of Ordinance 55784 constitute a taking without compensation or opportunity for hearing is unwarranted in that, again, it would be an exertion of jurisdiction for reviewing a finding of fact by the highest court of a state.

Although the Supreme Court of Missouri did not deal specifically with this issue in *City v. Liberman*, 547 S.W.2d 452 (1977), it did let stand its decision in the case of *Liberman v.*

Cervantes, 511 S.W. 2d 835 (1974), a declaratory judgment action, dealing with essentially the same issues.

In *Liberman v. Cervantes*, *supra*, the court found, based on cost figures produced at a hearing, that:

“Appellant has failed to demonstrate that the additional cost of doing business imposed by the requirement of photographs is confiscatory, prohibitive, or that it constitutes the taking of property without due process of law. . . .” (511 S.W. 2d 835 at 839).

V

Certiorari is not warranted to review petitioner's argument that the requirements of Ordinance 55784 that he take and make available to police officers photographs of his customers and certain detailed records, constitutes an invasion of privacy.

With respect to petitioner's assertion that his own privacy is invaded thereby, it is difficult to see how he can claim such an interest in photographs and documents which he maintains *only* because the law requires him to do so. The claim is particularly ludicrous in that the ordinance requires that these documents and photographs be maintained specifically so that they can be made available to police officers, both for preventing crime and apprehending criminals.

Essentially, petitioner is attempting to assert a right to privacy in that which is not actually his own—a right to be free from unwarranted governmental intrusion with respect to records he maintains only because the government, for its own purposes, requires him to do so. Again, the analogy of *United States v. Biswell*, 406 U.E. 311, 32 L. Ed. 2d 87, 92 S. Ct. 1593 (1972) is applicable. The threat to privacy is minimal in light of the overriding governmental interest in crime prevention.

With respect to petitioner's assertion that the right of his customers to privacy is violated, petitioner should not even be permitted to raise the issue, inasmuch as his customers could not do so, having effectively waived their right to complain.

In addition to its other requirements, Ordinance 55784 requires that petitioner conspicuously post a notice advising his customers of the photograph provisions of the ordinance. Thus, customers who choose to do business with petitioner are fully aware of the situation and, by transacting their business with petitioner despite the requirement of photographs, effectively waive their right to complain thereof subsequently.

VI

With respect to a determination of the issue of whether Ordinance 55784 requires involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution, certiorari should not be granted inasmuch as petitioner's contention is frivolous, shows a total lack of comprehension of the intent and scope of the amendment, and, in short, is an attempt to distort a concept which has been well-delineated by this court on innumerable occasions.

The Thirteenth Amendment was intended to deal with "... those forms of compulsory labor akin to African slavery. . . ." *Butler v. Perry*, 240 U.S. 328 at 332, 60 L.Ed. 672, 36 S.Ct. 258 (1916). Unquestionably, the distinguishing feature of African slavery was that those who were forced to engage in that particular "occupation" had absolutely no opportunity to choose whether or not they wished to do so.

Petitioner, on the other hand, does not—and cannot—assert that he was snatched from his mother's arms and physically compelled to be a pawnbroker. On the contrary, peti-

tioner voluntarily chose to engage in an occupation which he knew, for many years prior to his entry therein, had been the subject of the most stringent of state regulation.

CONCLUSION

Respondents respectfully pray this honorable court to deny petitioner's petition for writ of certiorari, inasmuch as: 1) said petition asks the court to consider issues of limited import and narrow application; 2) said petition, with respect to many of its arguments, seeks review of the findings of the highest court of a state with regard to questions of fact, and 3) said petition sets forth claims which are opposed to settled principles of law, said principles having been faithfully applied by the Missouri Supreme Court in its judgment and opinion.

Respectfully submitted,

JACK L. KOEHR
City Counselor

EUGENE P. FREEMAN
Deputy City Counselor

JUDITH A. RONZIO, Of Counsel
Assistant City Counselor

Room 314, City Hall
St. Louis, Missouri 63103
314-453-3361

Attorneys for Respondent